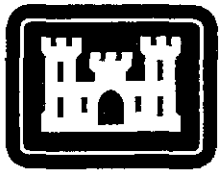

US Army Corps
of Engineers
Kansas City District

KANSAS CITY DISTRICT
CORPS OF ENGINEERS
and the
Drainage District NO. 7, Richardson County, Nebraska.

# Public Law 84-99 of the Flood Control Act of 1944
## Levee Rehabilitation – NEPA Review, Environmental Assessment & Finding of No Significant Impact

## Drainage District NO. 7, Richardson County, Nebraska.
## FEDERAL, MRLS 513 – 512 R

## Nemaha River and Missouri River
## Richardson County, Nebraska

June 2008

DEPARTMENT OF THE ARMY
KANSAS CITY DISTRICT, CORPS OF ENGINEERS
700 FEDERAL BUILDING
KANSAS CITY, MISSOURI 64106-2896

# Finding of No Significant Impact

Drainage District No. 7, Richardson County, Nebraska
MRLS 513 – 512 R

## Project Summary

The U.S. Army Corps of Engineers, Kansas City District (CENWK), in cooperation with the project sponsor, Drainage District No. 7, Richardson County, Nebraska, propose to construct a stabilization project on the left descending bank (LDB) of the Nemaha River, under the authority of Public Law 84-99 of the Flood Control Act of 1944. Three alternatives were considered: (1) Selectively place 26,000 tons of quarry run rock fill along 1,500 linear feet of the Nemaha River's left bank; (2) Place 38,000 tons of quarry run rock along 1,500 linear feet of the left bank of the Nemaha River; and (3) No action. The Corps has identified Alternative 1 – Selectively place 26,000 tons of quarry run rock fill along the LDB of the Nemaha River as the recommended plan. The proposed project would involve the placement of 26,000 tons of quarry run rock along 1,500 linear feet along the LDB of the Nemaha River. The rock will be selectively targeted along the revetment and at hard points. This will prevent further erosion and will provide stability where the channel bank is closest to the levee embankment. The damage to the levee was caused by the declared flood event of 6 May 2007. The proposed repairs are located in Richardson County, Nebraska, just downstream from the town of Fall's City, along the LDB of the Nemaha River.

## Alternatives

Three alternatives were considered: (1) Selectively place 26,000 tons of quarry run rock fill along 1,500 linear feet of the Nemaha River's left bank; (2) Place 38,000 tons of quarry run rock along 1,500 linear feet of the left bank of the Nemaha River. (3) No action.

## Recommended Plan

Alternative 1 – Selectively place 26,000 tons of quarry run rock fill along the Nemaha River's left bank is the recommended plan. The proposed project would involve the placement of 26,000 tons of quarry run rock along 1,500 linear feet of the Nemaha River's left bank. The rock will be selectively targeted along the revetment and at hard points. This will prevent further erosion and will provide stability where the channel bank is closest to the levee embankment.

## Summary of Environmental Impacts

Alternative 1 - Selectively place 26,000 tons of quarry run rock fill along 1,500 linear feet of the Nemaha River's left bank would have short term/minor adverse impacts to agricultural land. These impacts would be caused by heavy equipment operating on the site. The bank stabilization repairs required to protect the federal levee along the (LDB) of the Nemaha River, which are associated with Alternative 1, would result in no impacts to properties listed, proposed for listing, or potentially eligible for listing in the National Register of Historic Places. Alternative 1 would also have no impacts to any Federally-listed threatened or endangered species or their habitat. The flood risk management level achieved would be the same as the pre-flood levels. These minor adverse effects would be greatly offset by restoring the pre-flood flood risk management levels, and its associated social and economic benefits of the existing levee system. Alternative 1 meets the project purpose and need of restoring the flood risk level to the existing levee system. Of the three (3) alternatives considered, Alternative 1 – Selectively place 26,000 tons of quarry run rock fill along 1,500 linear feet of the Nemaha River's left bank is recommended because it has the highest cost/benefit ratio and is consistent with protection of the human environment.

## Mitigation Measures

The recommended plan will result in minor impacts to water resources as defined in USACE Planning regulations and under Section 404 of the Clean Water Act. These impacts are associated with the placement of rip-rap below the ordinary high water mark of the Nemaha River. This work is authorized by Nationwide Permit Number NWP-13. In addition, agricultural fields extend to the edge of the river; therefore no mitigation measures are warranted or proposed.

## Public Availability

Prior to a decision on whether to prepare an Environmental Impact Statement, the CENWK circulated a Notice of Availability (Notice) of the Environmental Assessment (EA) and Draft Finding of No Significant Impact (FONSI), dated June 9, 2008, with a thirty-day comment period ending on July 9, 2008 to the public and resource agencies. The Notice was e-mailed to individuals/agencies/businesses listed on the CENWK-Regulatory e-mail mailing list. The Notice informed these individuals that the EA and Draft FONSI were available on the CENWK webpage for review or that they could request a hard copy of the EA and Draft FONSI in order to provide comment. No comments were received.

Levee rehabilitation projects completed by the Corps under authority of Public Law 84-99 generally do not require the preparation of an Environmental Impact Statement. These projects typically result in long-term social and economic benefits and the adverse environmental effects are typically minor/long-term and minor/short-term construction related. Minor long-term impacts associated with these projects are typically well outweighed by the overall long-term social and economic benefits of these projects. As described above, the recommended plan is consistent with this assessment of typical levee rehabilitation projects completed by the Corps under authority of Public Law 84-99 of the Flood Control Act of 1944.

## Conclusion

After evaluating the anticipated environmental, economic, and social effects of the proposed activity, it is my determination that stabilization of the LDB on the Nemaha River does not constitute a major Federal action that would significantly affect the quality of the human environment; therefore, preparation of an Environmental Impact Statement is not required.

Date: 12 Aug 03

Roger A. Wilson, Jr.
Colonel, Corps of Engineers
District Commander

**DEPARTMENT OF THE ARMY**
KANSAS CITY DISTRICT, CORPS OF ENGINEERS
700 FEDERAL BUILDING
KANSAS CITY, MISSOURI 64106-2896

# EXECUTIVE SUMMARY

The U.S. Army Corps of Engineers, Kansas City District (CENWK), in cooperation with the project sponsor, Drainage District No. 7 propose to rehabilitate the Missouri River Levee System Unit No. 512-513 R, under the authority of Public Law 84-99 of the Flood Control Act of 1944. The proposed project would involve the placement of 26,000 tons of quarry run rock selectively along approximately 1,500 linear foot of the left descending bank (LDB) of the Nemaha River. The rock would be placed along a revetment and at several hard points. Repairs are required as a result of the flood event declared on May 6, 2007.

The MRLS 512 R levee segment is comprised of 47,360 linear feet of earthen Flood Control Works along the Nemaha River. The levee protects approximately 4,500 acres of agricultural land, 7 residences, 30 outbuildings, and 24 grain silos, State Highway 7, county roads and unimproved gravel roads. The recommended alternative consists of the placement of 26,000 tons of quarry run rock selectively along a revetment and at several hard points located along approximately 1,500 linear foot of the LDB of the Nemaha River.

Prior to a decision on whether to prepare an Environmental Impact Statement, the CENWK circulated a Notice of Availability (Notice) of the Environmental Assessment (EA) and Draft Finding of No Significant Impact (FONSI), dated June 9, 2008, with a thirty-day comment period ending on July 9, 2008 to the public and resource agencies. The Notice was e-mailed to individuals/agencies/businesses listed on the CENWK-Regulatory e-mail mailing list. The Notice informed these individuals that the EA and Draft FONSI were available on the CENWK webpage for review or that they could request the EA and Draft FONSI in writing, in order to provide comment.

Additional information concerning this project may be obtained from Mr. Neil Bass, Environmental Resources Specialist, PM-PR, Kansas City District - U.S. Army Corps of Engineers, by writing the above address, or by telephone at 816-389-3667.

NEPA REVIEW
ENVIRONMENTAL ASSESSMENT
&
FINDING OF NO SIGNIFICANT IMPACT
Drainage District NO. 7, Richardson County, Nebraska.
MRLS 513 – 512 R
PUBLIC LAW 84-99

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## Section 1: INTRODUCTION

This Environmental Assessment provides information that was developed during the National Environmental Policy Act (NEPA) public interest review of the proposed Public Law 84-99 Drainage District No. 7, Richardson County, Nebraska, MRLS 513 – 512 R Levee Rehabilitation Project.

## Section 2: AUTHORITY

The Kansas City District – U.S. Army Corps of Engineers (CENWK), in cooperation with the project sponsor, Drainage District No. 7, Richardson County, Nebraska, propose to construct the districts Levee Rehabilitation Project under the authority of Public Law 84-99 of the Flood Control Act of 1944.

## Section 3: PROJECT LOCATION

The 513 – 512 R Levee Rehabilitation Project is located in Richardson County, Nebraska, just downstream from the town of Fall's City, along the left descending bank (LDB) of the Nemaha River, and is described further below.

The 513 – 512 R levee segment consists of approximately 90,500 linear feet of earthen flood control works on the RDB of the Missouri River downstream of Rulo, Nebraska between River Miles 495 and 497 and on the RDB and LDB of the Nemaha River in Richardson County, Nebraska (Appendix I).

## Section 4: EXISTING CONDITION

The declared flood event on May 6, 2007 caused the following damages to the 513 – 512 R levee segment:

The damages were confined to the 512 R levee segment and consists of erosion, along the LDB of the Nemaha River, that has encroached to within 20 feet of the levee toe at Sta. 426.00 – 434.00.

## Section 5: PURPOSE & NEED FOR ACTION

The project is needed to rehabilitate the damages to the LDB of the Nemaha River adjacent to the 512 R levee and protect the infrastructure of the levee and secure the protection of the adjacent landward resources. The 512 R levee was encroached upon during the May 6, 2007 declared flood event. Prior to the May 6, 2007 event, the 512 R Levee District levee exceeded the 100 year level of flood risk management. In its current state, the levee could be undermined or breached during the next flood event. This existing condition exposes all public and private infrastructure and agricultural croplands to a high level of risk from future flooding. Failure to ensure the flood risk management capability of the levee system could keep area residents livelihood and social well-being in turmoil, subject to the continuous threat of flooding until a dependable level of flood protection is restored. A levee failure could adversely affect the tax base of the county and municipal governments and special districts, such as school districts. In addition, loss of jobs and potential losses in agricultural production on lands previously protected by the levees would also be incurred.

## Section 6: ALTERNATIVES CONSIDERED BUT NOT SELECTED AS PREFERRED

Two alternatives were considered but not selected as preferred. One build alternative (Alternative 2 – Place 38,000 tons of quarry run rock along 1,500 linear feet of the left bank of the Nemaha River) and Alternative 3 – The No Action Alternative were the alternatives not selected as preferred. Brief descriptions of the two alternatives are provided below.

Alternative 2 – Place 38,000 tons of quarry run rock along 1,500 linear feet of the left bank of the Nemaha River. This alternative would indiscriminately place 38,000 tons of rip-rap along the LDB of the Nemaha River between Sta. 426+00 and 434+00.

Alternative 3 - No Action Alternative. The No Action Alternative would involve no bank reconstruction and the levees would remain in their endangered condition. The No Action alternative would continue to expose public and private infrastructure and agricultural croplands to a high risk level of future flooding.

## Section 7: RECOMMENDED ALTERNATIVE

Alternative 1 - Selectively place 26,000 tons of quarry run rock fill along 1,500 linear feet of the Nemaha River's left bank to prevent further encroachment towards the levee embankment. The recommended plan consists of placing 26,000 tons of rip-rap along a revetment at Sta. 429+00 to 432+00 and at hard points located at Sta. 427+00, 428+00, 433+00, 434+00. The revetment and hard points will prevent further erosion and the revetment will stabilize the bank.

## Section 8: NATIONAL ENVIRONMENTAL POLICY ACT REVIEW

As part of the NEPA review for the proposed project, the CENWK circulated a Notice of Availability (Notice) of the Environmental Assessment (EA) and Draft Finding of No Significant Impact (FONSI), dated June 9, 2008, with a thirty-day comment period ending on July 9, 2008 to the public and resource agencies. The Notice was e-mailed to individuals/agencies/ businesses

listed on the CENWK-Regulatory e-mail mailing list. The Notice informed these individuals that the EA and Draft FONSI were available on the CENWK webpage or that they could request the EA and Draft FONSI in writing, in order to provide comment. No comments were received from coordination of the Notice.

**Section 9: AFFECTED ENVIRONMEMENT:**

A variety of resources along with the related environmental, economic and social effects were considered during the development and evaluation of project alternatives. These include: water quality; fish and wildlife; threatened and endangered species; vegetation; wetlands; agricultural lands; archaeological and historical resources; flood plains; economics; and esthetics.

The project area consists of agricultural row crop ground located on the Nemaha and Missouri River flood plain between river miles 495 and 497. The project area disturbance involves approximately 1,500 linear feet on the LDB of the Nemaha River and less than one acre of total terrestrial and aquatic disturbances.

**Section 10: ENVIRONMENTAL CONSEQUENCES:**

**Water quality**
The recommended plan, Alternative 1, could potentially result in minor, temporary, construction related adverse impacts to water quality resulting from site runoff and increased turbidity. The project impacts for this rehabilitation are below the one acre minimum required for a National Pollutant Discharge Elimination System (NPDES) permit. The minor impacts associated with the recommended plan would be further minimized to the greatest extent possible by the implementation of Best Management Practices and measures required under NPDES. The best management practices would be designed to minimize the incidental fallback of material into waterways during construction and to minimize the introduction of fuel, petroleum products, or other deleterious material from entering into the waterway. Such measures could include use of erosion control fences; storing equipment, solid waste, and petroleum products above the ordinary high water mark and away from areas prone to runoff; and requiring that all equipment be clean and free of leaks. To prevent fill from reaching water sources by wind or runoff, fill would be covered, stabilized or mulched, and silt fences would be used as appropriate. All appropriate measures will be taken to minimize erosion and storm water discharges during and after construction. The bank stabilization project would prevent bank erosion and limit sediment from entering the river from that project site.

Alternative 2 – Repairs resulting from implementation of this alternative would result in minor, temporary, construction related adverse impacts to water quality similar to those describe above. As with the Recommended Alternative, these impacts would be avoided and/or minimized to the greatest extent possible by the implementation of Best Management Practices and measures required under the NPDES.

In the "No Action" Alternative with the absence of the Federal action addressing levee improvements, flood waters could cause more erosion releasing sediments and causing the

failure of the levee. Levee failure could cause the flooding of previously protected areas and possibly wash agricultural pollutants and residential debris into the river.

**Fish and wildlife**
The recommended plan, Alternative 1, would result in minor, temporary, construction related adverse impacts to fish and wildlife resources. The impacts to wildlife resources would be related to noise and visual disturbance during the construction activity. The impacts to fishery resources would be related to site runoff and increased turbidity, which could make feeding, breeding, and sheltering difficult for species not accustomed to these conditions.

Alternative 2 – Repairs resulting from implementation of this alternative would result in similar impacts as described above.

The "No Action" Alternative would have minimal effects on fish and wildlife resources. Wetland species may benefit as more frequent flooding could occur in areas that would lose flood protection. Wetlands would likely recharge since they would then be hydrologically connected to the Nemaha River. Other terrestrial organisms could be temporarily displaced or have their habitat degraded by flooding.

**Threatened and Endangered Species**
The recommended plan would have no adverse effects on any Federally-listed threatened or endangered species or their habitat. Pallid sturgeon (*Scaphirhynchus albus*) are found primarily in the Missouri River and Mississippi River. No work is proposed within the Missouri River. Indiana bat (*Myotis sodalis*) roost in trees that tend to be greater than 9 inches diameter breast height during the spring and summer, and hibernate in caves during the fall and winter. Levee work would not impact Indiana bat habitat as no cottonwood or willow trees will be removed at this site. No impacts to any state listed threatened or endangered species or their habitat were identified.

Alternative 2 – Repairs resulting from implementation of this alternative would have no adverse effects on any Federally-listed threatened or endangered species or their habitat for the same reasons as described above.

The "No Action" alternative would have no adverse effects on any Federally-listed threatened or endangered species or their habitat. No impacts to any state listed threatened or endangered species or their habitat were identified.

**Vegetation**
The recommended plan, Alternative 1, would be constructed below the ordinary high water mark of the Nemaha River and would only impact early successional vegetation that has colonized the site since the flood event. The CENWK has determined in coordination with the US Fish and Wildlife Service that natural plant succession should provide adequate revegetation for these minor impacts.

Alternative 2 – Repairs resulting from implementation of this alternative would result in minimal impacts to vegetation as described above.

The "No Action" Alternative could result in increases to the floodplain and to floodplain vegetation if farm lands are abandoned after the levee is undermined and the area is exposed to the high risk of flooding. Overtime, succession could result in increases to floodplain forest.

**Wetlands**
The recommended plan, Alternative 1, would result in no impacts to wetlands.

Alternative 2 - Repairs resulting from implementation of Alternative 2 would have no impacts to wetlands.

The "No Action" Alternative could result in benefits to wetlands located on the flood plain. Wetlands currently within the protected areas could become unprotected if the levee was undermined. These wetlands would then be subject to a high level of future flooding.

**Agricultural Land**
The recommended plan, Alternative 1, will result in bank stabilization and protection of adjacent agricultural land (approximately 4,450 acres). However, there could be some minor short-term impacts to less than five acres of agricultural land from moving the equipment, necessary to place the rock, on site.

Alternative 2 – Repairs resulting from implementation of Alternative 2 would have the same impacts on agricultural land as those described above.

The "No Action" Alternative would adversely impact agricultural activity by increasing the risk of levee failure and thus exposing approximately 4,450 acres of agricultural lands to increased flooding. This loss of agricultural production would have related impacts such as loss of income, lower tax base, and a decreased land value.

**Archeological and Historical Resources**
A cultural resources review of the proposed levee repairs for the R512-513 levee rehabilitation in Richardson County, Nebraska was conducted by a Kansas City District archeologist. No sites listed on or eligible for listing on the National Register of Historic Places are located within or near the proposed project area. Since all repair impacts will be limited to the stabilizing the LDB of the Nemaha River, the proposed project, Alternative 1, will have no potential to impact historic properties. Therefore, no SHPO coordination is required for the project. If project plans change and new right-of-way or borrow is required, than SHPO coordination would be required.

If in the unlikely event that archeological materials are discovered during project construction, work in the area of discovery will cease and the discovery investigated by a qualified archeologist. The findings on the discovery would be coordinated with the Nebraska SHPO and appropriate federally recognized Native American tribes.

Alternative 2 – Repairs resulting from implementation of this alternative would not have impacts to archaeological or historical resources as described above.

The "No Action" Alternative would result in no effects to archaeological or historical resources.

**Flood Plain**
The recommended plan, Alternative 1, would stabilize the LDB of the Nemaha River and protect the existing federal levee. This will secure the levee and its 100+ year level of flood protection. The area is located in the base floodplain and is subject to Executive Order 11988, "Floodplain Management". As the recommended plan would not directly or indirectly support more development in the floodplain or encourage additional occupancy and/or modify of the base floodplain, the Corps has determined that the recommended plan complies with the intent of Executive Order 11988.

Alternative 2 – Repairs resulting from implementation of this alternative would result in a similar level of flood protection as described above.

The "No Action" Alternative would increase the risk of levee failure and expose all public and private infrastructure and agricultural croplands protected to a higher level of future flooding.

**Economics**
With the implementation of the recommended plan, the levees would be restored to 100+ year level of flood protection. Public and private infrastructure and agricultural croplands protected by the levee prior to the flood damage would continue to be protected against a 100+ year flood event. Economic conditions are unlikely to change from those of pre-damage levee conditions with the repair of this levee system.

Alternative 2 would require a greater amount of fill and stone and have a larger section of the LDB repaired with rip-rap. This alternative would have a lower benefit to cost ratio than Altenative 1.

The "No Action" Alternative has a zero benefit to cost ratio and would continue to expose all public and private infrastructure and agricultural croplands to an increased level of risk of future flooding. People's livelihood and social well-being would remain in turmoil and subject to the continuous threat of flooding until the level of flood protection is restored. Failure to reconstruct the levee could adversely affect the tax base of the counties and municipal governments and special districts, such as school districts. In addition, loss of jobs and potential losses in agricultural production on lands protected by the levee would also be incurred.

**Esthetics**
Alternative 1, the recommended plan would result in minor long term adverse esthetic impacts associated with the construction activity. Upon completion of the project, rip-rap above the ordinary high-water mark would begin to silt in and revegetate, but the rip-rap below the ordinary high-water mark would remain visible along the LDB of the Nemaha River. A small population, restricted to the occasional boater on the Nemaha River or person(s) participating in outdoor recreation on the private land in the project area, would be affected by the impacts. Alternatives 2 – Repairs resulting from implementation of this plan would result in impacts similar to those described above.

The "No Action" Alternative would have no effect on esthetics.

## Section 11: CUMULATIVE IMPACTS

The combined incremental effects of human activity are referred to as cumulative impacts (40CFR 1508.7). While these incremental effects may be insignificant on their own, accumulated over time and from various sources, they can result in serious degradation to the environment. The cumulative impact analysis must consider past, present, and reasonably foreseeable actions in the study area. The analysis also must include consideration of actions outside of the Corps, to include other State and Federal agencies. As required by NEPA, the Corps has prepared the following assessment of cumulative impacts related to the alternatives being considered in this EA.

Historically, the Nemaha River and its floodplain has been altered by bank stabilization, dams on the river and its tributaries, roads/bridges, agricultural and urban levees, channelization, farming, water withdrawal for human and agricultural use, urbanization and other human uses. These activities have substantially altered the terrestrial and aquatic ecosystem within the Nemaha River watershed.

The Corps, which administers Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act, has issued and will continue to evaluate permits authorizing the placement of fill material in the Waters of the United States and/or work on, in, over or under a navigable water of the United States including the Missouri River and its tributaries. These levee repair projects typically result in minor impacts to the aquatic ecosystem. The Corps, under the authority of the Public Law 84-99 Levee Rehabilitation and Inspection Program, has and will continue to provide rehabilitation assistance to Federal and non-Federal levee sponsors along the Nemaha River which participate in the Public Law 84-99 Program. These projects typically result in minor short term construction related impacts to fish and wildlife and the habitats upon which they depend. Resources typically affected by this type of project generally include, but are not limited to, wetlands, flood plain values, water quality, and fish and wildlife habitat. It should be noted that these projects do not result in an addition to flood heights or reduced flood plain area but are merely a form of maintenance to that which had previously existed.

Of the reasonably foreseeable projects and associated impacts that would be expected to occur, further urbanization of the floodplain will probably have the greatest impact on these resources in the future. The possibility of wetland conversion and the clearing of riparian habitat is ever present, and these activities also tend to impact these resources. Construction of additional agricultural levees may occur provided land becomes available for this purpose; however, the trend seems to be moving in the opposite direction and towards urban development. The era of major reservoir construction has past, thus impacts from these projects likely will not occur.

The adverse effects associated with the proposed project are long-term/minor associated with the loss of agricultural cropland, and short term/minor associated with project construction. These minor adverse effects would be greatly offset by restoring the flood risk management capability and its associated social and economic benefits of the existing levee system. The PL84-99 Program is designed to merely bring the damaged levees back to pre-existing conditions (i.e., the status quo). Thus, no significant cumulative impacts associated with the proposed rehabilitation of the existing levee system have been identified.

## Section 12: MITIGATION MEASURES

The recommended plan, Alternative 1, will not result in impacts to mitigable resources as defined in USACE Planning regulations and under Section 404 of the Clean Water Act. The impacts are associated with the placement of rip-rap along the LDB of the Nemaha River below the OHM. These actions are authorized by Nationwide Permit Number NWP-13.

## Section 13: COMPLIANCE WITH ENVIRONMENTAL QUALITY STATUTES

Compliance with Designated Environmental Quality Statutes that have not been specifically addressed earlier in this report is covered in Table 1.

## Section 14: CONCLUSION & RECOMMENDATION

The bank stabilization repairs at 513 R Richardson County, Nebraska would continue to protect the adjacent agricultural land. The flood risk management level achieved by the recommended plan, Alternative 1, would be the same as the original pre-flood levees. The recommended plan would result in no impacts to any Federally-listed threatened or endangered species or their habitat. The recommended plan would result in no impacts to any properties listed, proposed for listing, eligible for listing, or potentially eligible for listing in the National Register of Historic Places. The adverse effects associated with the proposed project are short-term/minor and are associated with the minor disturbance of less than five acres of agricultural cropland caused by the movement of equipment on site and around the site for rock placement. These minor adverse effects would be greatly offset by restoring the flood risk level to the adjacent levee and the adjacent protected lands. The recommended plan, (Selectively place 26,000 tons of quarry run rock fill along 1,500 linear feet of the Nemaha River's left descending bank to prevent further encroachment towards the levee embankment) meets the project purpose and need of stabilizing the LDB of the Nemaha River and protecting the adjacent federal levee. Of the three (3) alternatives considered, the recommended plan has the highest cost/benefit ratio, satisfies all the project needs, and is consistent with protection of the human environment.

Based on coordination with the resource agencies and input gained through a public interest review, as documented in this Environmental Assessment, the Kansas City District – Corps of Engineers has made the determination that this project would have no significant impacts on the human environment including natural and cultural resources and Federally-listed threatened and endangered species; therefore, a Finding of No Significant Impact (FONSI) has been prepared. This NEPA decision document will be forwarded to the District Engineer with the recommendation for approval, following the end of the public review period.

## Section 15: PREPARERS

This EA and the associated FONSI were prepared by Mr. Neil Bass (Environmental Resource Specialist), with relevant sections prepared by Mr. Timothy Meade (Cultural Resources). The address of the preparers is: U.S. Army Corps of Engineers, Kansas City, District; PM-PR, Room 843, 601 E. 12th St, Kansas City, MO 64106.

## Table 1
## Compliance of Preferred Alternative with Environmental Protection Statutes and Other Environmental Requirements

| Federal Polices | Compliance |
|---|---|
| Archeological Resources Protection Act, 16 U.S.C. 470, et seq. | Full Compliance |
| Clean Air Act, as amended, 42 U.S. C. 7401-7671g, et seq. | Full Compliance |
| Clean Water Act (Federal Water Pollution Control Act), 33 U.S.C. 1251, et seq. | Full Compliance |
| Coastal Zone Management Act, 16 U.S.C. 1451, et seq. | Not Applicable |
| Endangered Species Act, 16 U.S.C. 1531, et seq. | Full Compliance |
| Estuary Protection Act, 16 U.S.C. 1221, et seq. | Not Applicable |
| Federal Water Project Recreation Act, 16 U.S.C. 4601-12, et seq. | Full Compliance |
| Fish and Wildlife Coordination Act, 16 U.S.C. 661, et seq. | Full Compliance |
| Land and Water Conservation Fund Act, 16 U.S.C. 4601-4, et seq. | Not Applicable |
| Marine Protection Research and Sanctuary Act, 33 U.S.C. 1401, et seq. | Not Applicable |
| National Environmental Policy Act, 42 U.S.C. 4321, et seq. | Full Compliance |
| National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470a, et seq. | Full Compliance |
| Rivers and Harbors Act, 33 U.S.C. 403, et seq. | Full Compliance |
| Watershed Protection and Flood Prevention Act, 16 U.S.C. 1001, et seq. | Full Compliance |
| Wild and Scenic River Act, 16 U.S.C. 1271, et seq. | Not Applicable |
| Farmland Protection Policy Act, 7 U.S.C. 4201, et. seq. | Full Compliance |
| Protection & Enhancement of the Cultural Environment (Executive Order 11593) | Full Compliance |
| Floodplain Management (Executive Order 11988) | Full Compliance |
| Protection of Wetlands (Executive Order 11990) | Full Compliance |
| Environmental Justice (Executive Order 12898) | Full Compliance |

**NOTES:**

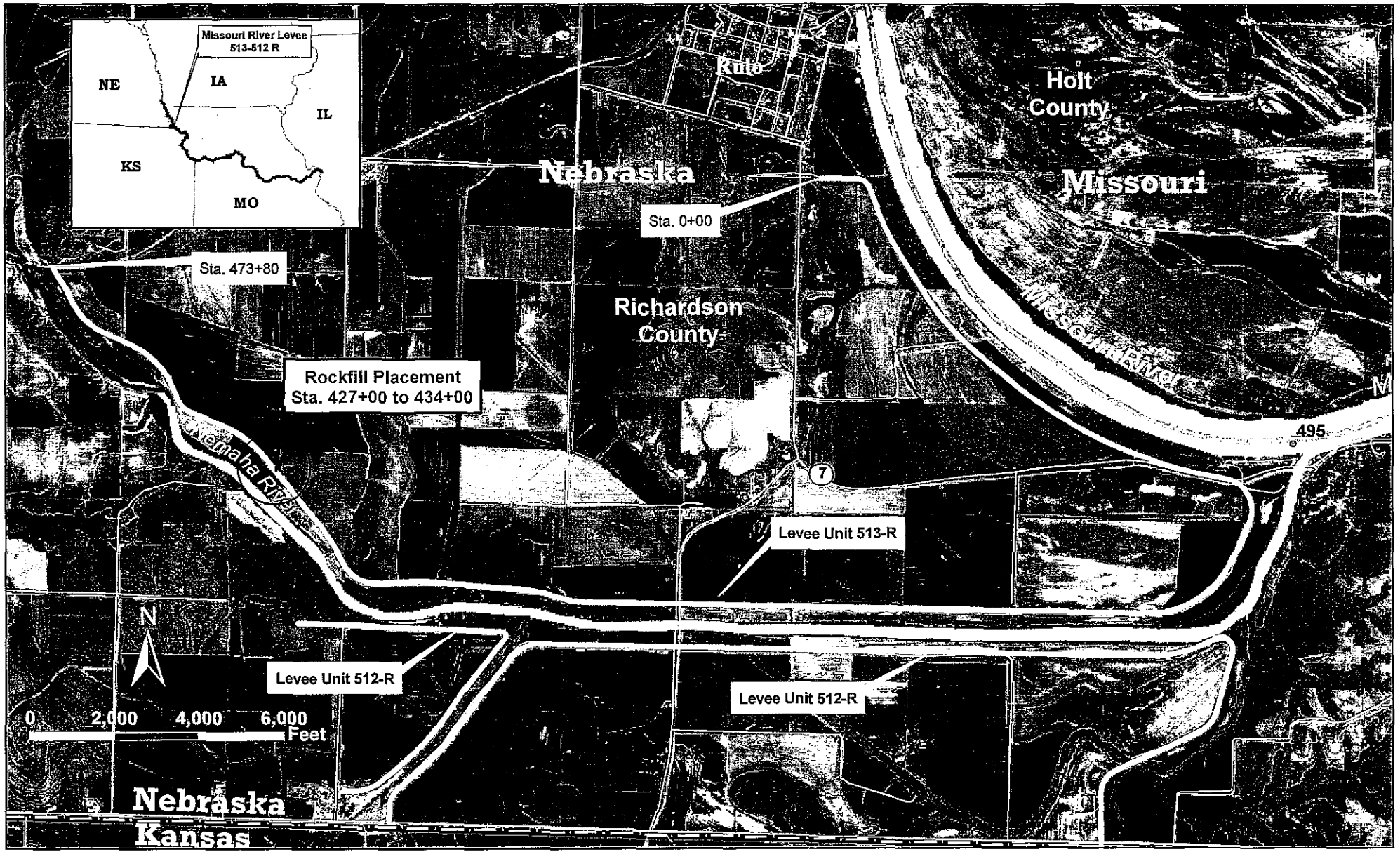
a. Full compliance. Having met all requirements of the statute for the current stage of planning (either preauthorization or postauthorization).
b. Partial compliance. Not having met some of the requirements that normally are met in the current stage of planning.
c. Noncompliance. Violation of a requirement of the statute.
d. Not applicable. No requirements for the statute required; compliance for the current stage of planning.

Clean Water Act, Section 404 and 401
The recommended plan involves placement of fill material in a Water of the United States and therefore, Clean Water Act, Section 401 Water Quality Certification and Section 404b1 were covered under NWP No. 13 and is located in Appendix II.

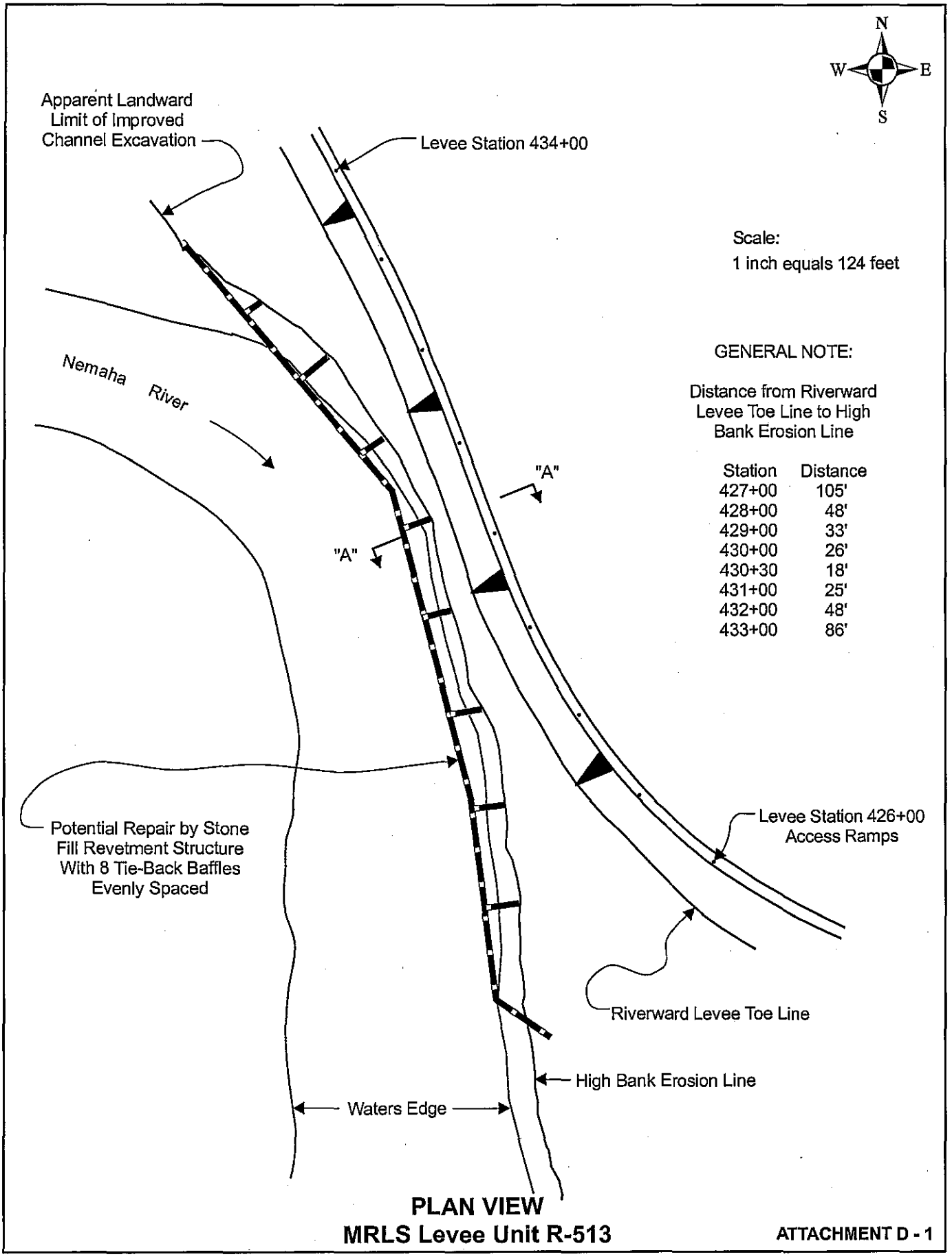
Clean Water Act, Section 402
A NPDES permit was not required since disturbance was less than one acre.

Endangered Species Act, Section 7
The Corps of Engineers has made a determination that no impacts to any federally listed threatened or endangered species or their habitat would occur with the project action. Coordination of ESA would be completed upon review of this EA and concurrence of this determination with the USFWS.

National Historic Preservation Act
No sites listed on or eligible for listing on the National Register of Historic Places are located within or near the proposed project area. Therefore, no coordination with the Nebraska State Historic Preservation Office (SHPO) is required for the project.

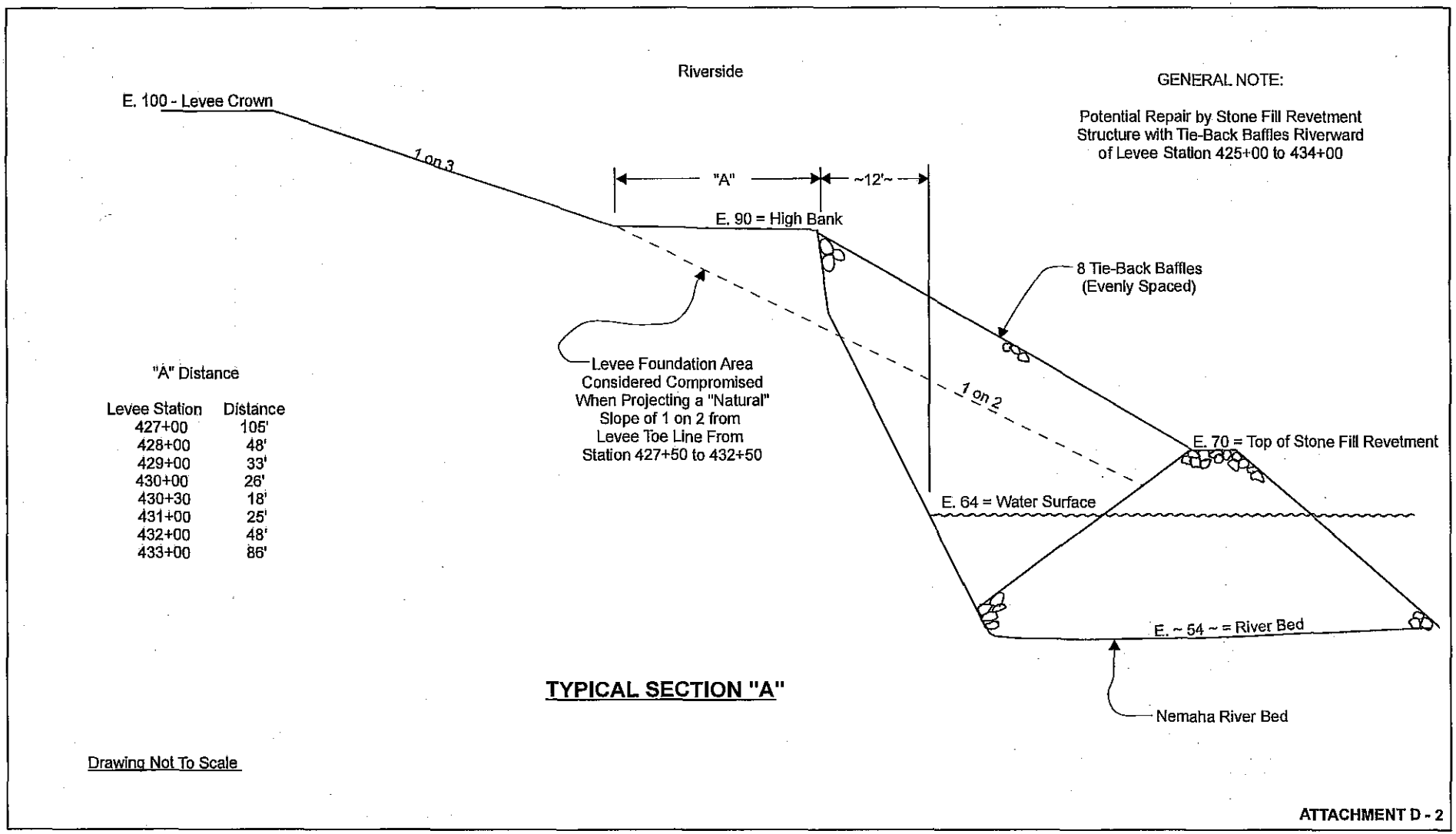



Attachment D-4




**PLAN VIEW**
**MRLS Levee Unit R-513**

**ATTACHMENT D - 1**




GENERAL NOTE:

Potential Repair by Stone Fill Revetment Structure with Tie-Back Baffles Riverward of Levee Station 425+00 to 434+00

"A" Distance

| Levee Station | Distance |
|---|---|
| 427+00 | 105' |
| 428+00 | 48' |
| 429+00 | 33' |
| 430+00 | 26' |
| 430+30 | 18' |
| 431+00 | 25' |
| 432+00 | 48' |
| 433+00 | 86' |

**TYPICAL SECTION "A"**

Drawing Not To Scale

**ATTACHMENT D - 2**

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
NEBRASKA REGULATORY OFFICE - WEHRSPANN
8901 SOUTH 154TH STREET, SUITE 1
OMAHA, NEBRASKA 68138-3621

REPLY TO
ATTENTION OF

https://www.nwo.usace.army.mil/html/od-rne/NEhome.html

March 11, 2008

Mr. Neil Bass
US Army Corps of Engineers
601 E 12th Street, Room 847
Kansas City, Missouri 64106

RE: 2008-00165-WEH

Dear Mr. Bass:

We have reviewed the request for Department of the Army authorization for construction of a revetment to protect the R 513 levee in the Big Nemaha River. The work will be carried out in accordance with application received on January 17, 2008 and completed February 15, 2008. The site is located in NW ¼ of Section 26, Township 1 North, Range 17 East, Richardson County, Nebraska.

Based on the information you provided, this office has determined that your work is authorized by the Department of the Army Nationwide Permit **No. 13** , found in the March 12, 2007 Federal Register (73 FR 11092), Reissuance of Nationwide Permits. Enclosed is a fact sheet that fully describes this Nationwide Permit and lists the General Conditions that must be adhered to for this authorization to remain valid. Please note that deviations from the original plans and specifications of your project could require additional authorization from this office.

**This authorization is subject to the following Special Condition(s):**

**1. The placed riprap must be covered, from the top of the structure down to the annual ordinary high water line, with a minimum of 6 inches of soil compacted into the voids of the riprap and immediately seeded with an annual rye grass (nurse crop) plus a mixture of native grass species. The U.S. Army Corps of Engineers must be notified that this has been completed with photo documentation and seed tags.**

**2. Prior to the commencement of construction activities the following shall be provided to the above Regulatory Office address: construction start date, project manager's or point of contact's name and the project manager's or point of contact's phone number.**

**This authorization is subject to the following Regional Condition(s):**

**1. All areas disturbed by construction shall be revegetated with appropriate perennial, native grasses and forbs and maintained in this condition. *Phalaris arundinacea* (Reed Canary Grass), *Lythrum salicaria* (Purple Loosestrife), *Bromus inermus* (Smooth Brome), *Phragmites, sp.* (Common Reed, River Reed) and *Tamarix, sp.* (Salt Cedar), are *NOT* appropriate choices of vegetation. The disturbed areas shall be reseeded concurrent with the project or immediately upon completion. Revegetation shall be acceptable when ground cover of desirable species reaches 75%. If this seeding cannot be accomplished by September 15 the year of project completion, then an erosion blanket shall be placed on the disturbed areas. The erosion blanket shall remain in place until ground cover of desirable species reaches 75%. If the seeding can be accomplished by September 15, all seeded areas shall be properly mulched to prevent additional erosion.**

**2. The permittee and/or the permittee's contractor or any of the employees, subcontractors or other persons working in the performance of a contract or contracts to complete the work authorized herein, shall cease work and report the discovery of any previously unknown historic or archeological remains to the Nebraska Regulatory Office. Notification shall be by telephone or FAX within 24 hours of the discovery and in writing within 48 hours. Work shall not resume until the permittee is notified by the Nebraska Regulatory Office.**

**3. If using any riprap other than quarry graded/sized rock riprap, the following regional conditions will apply:**

a) **All riprap, including broken concrete, must meet the requirements in gradation conditions below and must be chemically acceptable, free of protruding reinforcing steel or wire mesh or other construction debris (i.e., lath, plaster, asphalt, scrap iron, etc.) and from a non-streambed source.**
b) **Any material used shall be reasonably well-graded material to create a dense erosion resistant structure.**
c) **The material shall range in size from 6 to 36 inches in maximum dimension. The average mean dimension shall be approximately 13 inches and the protection layer thickness shall be 1.0 to 1.5 times the largest rock dimension. Variations to this gradation can be considered on a case by case basis, but must be accompanied by a design analysis that supports the variation.**
d) **The material shall be angular in shape. No more than 30% of the material shall have the maximum dimension more than 2.5 times the minimum dimension and no material shall have the maximum dimension more than 3.5 times the minimum.**
e) **Encroachment of riprap into the channel will be kept to a minimum.**
f) **The top elevation of the riprap shall not exceed the top elevation of the bank.**

An approved jurisdictional determination (JD) has been completed for your project. The JD will be made available to you upon request, or it may be viewed at our website at https://www.nwo.usace.army.mil/html/od-rne/nehome.html. The JD will be available on the website within 30 days. If you are not in agreement with the JD, you may request an administrative appeal under Army Corps of Engineers regulations found at 33 C.F.R. 331. The Request for Appeal must be received with 60 days from the date of this correspondence May 9, 2008. If you would like more information on the jurisdictional appeal process, contact this office. It is not necessary to submit a Request for Appeal if you do not object to the JD.

Although an individual Department of the Army permit will not be required for the project, this does not eliminate the requirement that you obtain any other applicable Federal, state, tribal or local permits as required. Please note that deviations from the original plans and specifications of your project could require additional authorization from this office.

You are responsible for all work accomplished in accordance with the terms and conditions of the Nationwide Permit. If a contractor or other authorized representative will be accomplishing the work authorized by the Nationwide Permit in your behalf, it is strongly recommended that they be provided a copy of this letter and the attached conditions so that they are aware of the limitations of the applicable Nationwide Permit. Any activity that fails to comply with all of the terms and conditions of the Nationwide Permit will be considered unauthorized and subject to appropriate enforcement action.

**In compliance with General Condition 26, the attached Compliance Certification form must be signed and returned to the address listed upon completion of the authorized work and any required mitigation.**

This verification will be valid until **March 10, 2010.**

Should you at any time become aware that either an endangered and/or threatened species or its critical habitat exists within the project area, you must immediately notify this office.

If you have any questions concerning this determination or jurisdiction, please contact Matt Wray at 402-896-0896 and reference Nationwide Permit number **2008-00165-WEH**.

Sincerely,

Laura Banker

for John L. Moeschen
Nebraska State Program Manager

Enclosure

CF:
NDEQ (Terry Hickman)

## COMPLIANCE CERTIFICATION
## WEHRSPANN REGULATORY OFFICE

**Permit Number** 2008-00165-WEH

**County:** Richardson

**Name of Permittee:** US Army Corps of Engineers

**Date of Issuance:** March 11, 2008

**Project Manager:** Matt Wray

**Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:**

**U. S. Army Corps of Engineers**
**Nebraska Regulatory Office - Wehrspann**
**8901 South 154th St., Suite 1**
**Omaha, NE 68138-3621**

Please note that the permitted activity is subject to a compliance inspection by a U. S. Army Corps of Engineers representative. If you fail to comply with permit conditions the permit may be subject to suspension, modification, or revocation.

**CERTIFICATION:**

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of said permit, and required mitigation (if any) was completed in accordance with permit conditions.

_____

Signature of Permittee Date

**IMPORTANT**
**RETURN THIS FORM TO US ARMY CORPS OF ENGINEERS WHEN PROJECT IS COMPLETED.**

STATE OF NEBRASKA

**Dave Heineman**
*Governor*

DEPARTMENT OF ENVIRONMENTAL QUALITY
**Michael J. Linder**
*Director*
Suite 400, The Atrium
1200 'N' Street
P.O. Box 98922
Lincoln, Nebraska 68509-8922
Phone (402) 471 2186
FAX (402) 471 2909
website: www.deq.state.ne.us

JUN 1 1 2007

John Moeschen
Nebraska Regulatory Office
U.S. Army Corps of Engineers
8901 South 154th Street
Omaha, NE 68138

Re: Nebraska's Water Quality Certification for NWP 13.

Dear Mr. Moeschen,

The Public Notice for this NWP was published in the Omaha World Herald on May 9, 2007. The P.N. expired June 11, 2007. Our agency received no comments concerning this Intent to Certify.

We therefore, by this letter, provide Section 401 Water Quality Certification for Nationwide Permit 13.

Sincerely,

Marty Link
Associate Director,
Water Quality Division

**FACT SHEET**
**NATIONWIDE PERMIT 13**

**BANK STABILIZATION.** Bank stabilization activities necessary for erosion prevention, provided the activity meets all of the following criteria:

(a) No material is placed in excess of the minimum needed for erosion protection;

(b) The activity is no more than 500 feet in length along the bank, unless this criterion is waived in writing by the district engineer;

(c) The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or the high tide line, unless this criterion is waived in writing by the district engineer;

(d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless this criterion is waived in writing by the district engineer;

(e) No material is of the type, or is placed in any location, or in any manner, to impair surface water flow into or out of any water of the United States;

(f) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas); and,

(g) The activity is not a stream channelization activity.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity: (1) involves discharges into special aquatic sites; (2) is in excess of 500 feet in length; or (3) will involve the discharge of greater than an average of one cubic yard per running foot along the bank below the plane of the ordinary high water mark or the high tide line. (Sections 10 and 404)

**General Conditions:** To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as appropriate, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer.

**1. Navigation.** (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

**2. Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's

primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.

3. **Spawning Areas.** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. **Migratory Bird Breeding Areas.** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. **Shellfish Beds.** No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48.

6. **Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

7. **Water Supply Intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. **Adverse Effects From Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. **Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. **Fills Within 100-Year Floodplains.** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. **Equipment.** Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. **Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during

construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

**13. Removal of Temporary Fills.** Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

**14. Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.

**15. Wild and Scenic Rivers.** No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

**16. Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

**17. Endangered Species.** (a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees shall notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45

days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, both lethal and non-lethal "takes" of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide Web pages at http://www.fws.gov/ and http://www.noaa.gov/fisheries.html respectively.

**18. Historic Properties.** (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

**19. Designated Critical Resource Waters.** Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the district engineer after notice and opportunity for public comment. The district engineer may also designate additional critical resource waters after notice and opportunity for comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, and 50 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 27, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

**20. Mitigation.** The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10 acre and require pre-construction notification, unless the district engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. For wetland losses of 1/10 acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream restoration, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2 acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2 acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way,

mitigation may be required to reduce the adverse effects of the project to the minimal level.

**21. Water Quality.** Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

**22. Coastal Zone Management.** *Not Applicable.*

**23. Regional and Case-By-Case Conditions.** The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

**24. Use of Multiple Nationwide Permits.** The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

**25. Transfer of Nationwide Permit Verifications.** If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

"When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

_____

(Transferee)

_____

(Date)

**26. Compliance Certification.** Each permittee who received an NWP verification from the Corps must submit a signed certification regarding the completed work and any required mitigation. The certification form must be forwarded by the Corps with the NWP verification letter and will include:

(a) A statement that the authorized work was done in accordance with the NWP authorization, including any general or specific conditions;

(b) A statement that any required mitigation was completed in accordance with the permit conditions; and

(c) The signature of the permittee certifying the completion of the work and mitigation.

**27. Pre-Construction Notification.** *See attached pages.*

**28. Single and Complete Project.** The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

**Further Information**

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.

3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

5. NWPs do not authorize interference with any existing or proposed Federal project.

**General Condition 27. Pre-Construction Notification.**

(a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, as a general rule, will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity:

(1) Until notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) If 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 17 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 18 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) is completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee cannot begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the

terms of the NWP. (Sketches usually clarify the project and when provided result in a quicker decision.);

(4) The PCN must include a delineation of special aquatic sites and other waters of the United States on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters of the United States, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, where appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10 acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP 48 activities requiring pre-construction notification and for other NWP activities requiring pre-construction notification to the district engineer that result in the loss of greater than 1/2-acre of waters of the United States, the district engineer will immediately provide (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy of the PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an

agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps multiple copies of pre-construction notifications to expedite agency coordination.

(5) For NWP 48 activities that require reporting, the district engineer will provide a copy of each report within 10 calendar days of receipt to the appropriate regional office of the NMFS.

(e) District Engineer's Decision: In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If the proposed activity requires a PCN and will result in a loss of greater than 1/10 acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any conditions the district engineer deems necessary. The district engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP.

If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan.

A cultural resources review of the proposed levee repairs for the R512-513 levee rehab in Richardson County, Nebraska was conducted by the Kansas City District archeologist. No sites listed on or eligible for listing on the National Register of Historic Places are located within or near the proposed project area. Since all repair impacts will be limited to the existing levee facility, the proposed project will have no potential to impact historic properties. Therefore, no SHPO coordination is required for the project. If project plans change and new right-of-way or borrow is required, than SHPO coordination would be required.

If in the unlikely event that archeological materials are discovered during project construction, work in the area of discovery will cease and the discovery investigated by a qualified archeologist. The findings on the discovery would be coordinated with your office and appropriate federally recognized Native American tribes.